

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GERALD WILSON  
B-93800,

Plaintiff,

v.

A. CUEVAS; M. MOYA; J. OLIVO;  
M.A. MENDOZA,

Defendants.

Case No.: 3:16-cv-02100-BTM-DHB

**ORDER DISMISSING CIVIL  
ACTION WITHOUT PREJUDICE  
FOR FAILING TO PAY  
FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO MOVE TO PROCEED  
IN FORMA PAUPERIS  
PURSUANT TO  
28 U.S.C. § 1915(a)**

Gerald Wilson ("Plaintiff"), currently incarcerated at California State Prison, Corcoran located in Corcoran, California, and proceeding pro se, has filed a civil rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (ECF No. 1).

**I. Failure to Pay Filing Fee or Request IFP Status**

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff's failure to  
 2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
 3 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*  
 4 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a prisoner, and  
 5 even if he is granted leave to commence his suit IFP, he remains obligated to pay the  
 6 entire filing fee in "increments," *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir.  
 7 2015), regardless of whether his case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1)  
 8 & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Plaintiff has not prepaid the \$400 in filing and administrative fees required to  
 10 commence this civil action, nor has he submitted a properly supported Motion to Proceed  
 11 IFP pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28  
 12 U.S.C. § 1914(a); *Andrews*, 493 F.3d at 1051.

## 13 **II. Conclusion and Order**

14 For the reasons set forth above, the Court hereby:

15 (1) **DISMISSES** this action sua sponte without prejudice for failure to pay the  
 16 \$400 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to  
 17 28 U.S.C. §§ 1914(a) and 1915(a); and

18 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is  
 19 filed to: (a) prepay the entire \$400 civil filing and administrative fee in full; or (b)  
 20 complete and file a Motion to Proceed IFP which includes a certified copy of his trust  
 21 account statement for the 6-month period preceding the filing of his Complaint. *See* 28  
 22 U.S.C. § 1915(a)(2); S.D. Cal. CivLR 3.2(b).

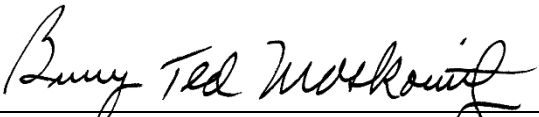
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 26 <sup>1</sup> In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.  
 27 *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14  
 (eff. Dec. 1, 2014). The additional \$50 administrative fee does not apply to persons granted leave to  
 proceed IFP. *Id.*

1           **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff  
2 with this Court's approved form "Motion and Declaration in Support of Motion to  
3 Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee or  
4 complete and submit the enclosed Motion to Proceed IFP within 45 days, final judgment  
5 will be entered dismissing this case without prejudice.

6           **IT IS SO ORDERED.**

7 Dated: September 2, 2016

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10 Hon. Barry Ted Moskowitz, Chief Judge  
11 United States District Court  
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